

## Family Proceedings/Guardianship

August 08

Steps for general proceedings under the Family Proceedings Act 1980 and Care of Children Act 2004 (Excluding application for parenting or paternity orders)

### Step 1: Investigate and make application

Activity	Guideline Hours	Tasks normally covered by Guideline Hours
<b>Maintenance and/or guardianship order(s)</b> (see Granting Notes for types of proceedings)	up to <b>8</b> hours	For <ul style="list-style-type: none"> <li>• Taking instructions, attending client</li> <li>• Identifying legal and factual issues</li> <li>• Preparing application for legal aid</li> <li>• Referrals to counselling services</li> <li>• Conducting initial negotiations between parties</li> <li>• Preparing application for interim/final order(s), including:               <ul style="list-style-type: none"> <li>○ Affidavit(s) in support</li> <li>○ Information sheets for the Court</li> </ul> </li> <li>• Serving of documents</li> <li>• Receiving minute/orders (either following in chambers or 1<sup>st</sup> Registrar's/Judge's List call)</li> <li>• Reporting to client</li> <li>• Reporting to and invoicing LSA</li> </ul>
<b>Formal Proof hearing</b>	up to <b>2</b> hours <b>Actual</b> hours	For preparing for hearing For attending hearing to resolve undefended application(s)
<b>Memorandum of consent</b>	up to <b>2</b> hours	For <ul style="list-style-type: none"> <li>• Preparing memorandum of consent if agreement reached</li> <li>• Seeking approval by court</li> </ul>

### Documentation Requirements

- Application for Family Legal Aid (*LSA Form 6*) [s12 Legal Services Act 2000].
- Family Legal Aid Tax Invoice (*LSA Form 10*) – including a report on progress with the proceedings.

### Granting Notes

Granting Notes, which should be read in conjunction with the application of this step to a grant, are set out on pages 4-6 for:

- Types of proceedings
- Additional factors
- Interpreter

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### Step 2: Pre-hearing Matters and Mediation

Activity	Guideline Hours	Tasks normally covered by Guideline Hours
<b>Pre-hearing matters</b>	up to <b>8</b> hours	For <ul style="list-style-type: none"> <li>• Taking further instructions and undertaking negotiations</li> <li>• Preparing amendment to legal aid grant (if expecting to exceed the guideline hours for this step)</li> <li>• Attending Registrar's List/Chambers hearings</li> <li>• Liaising with relevant parties – CYFS, Counsel for Child, witnesses, experts</li> <li>• Considering specialist reports for example s132 report (social worker), s133 report (mental health, cultural specialist)</li> <li>• Undertaking discovery</li> <li>• Preparing interlocutory application(s), pre-trial conference memorandum</li> <li>• Reporting to client</li> <li>• Reporting to and invoicing LSA</li> </ul>
<b>Mediation Conference</b> (Judge-led)	up to <b>1.5 times</b> anticipated conference time (hrs)  <b>Actual</b> hours	For <ul style="list-style-type: none"> <li>• Reviewing file</li> <li>• Preparing for hearing – briefing client, submissions</li> <li>• Reporting to client</li> </ul> For attending mediation conference
<b>Interlocutory hearing(s)</b>	up to <b>1.5 times</b> anticipated hearing time (hrs)  <b>Actual</b> hours	For preparing submissions for interlocutory hearing(s)  For attending interlocutory hearing(s)

### Documentation Requirements

- Family Legal Aid Amendment to Grant (*LSA Form 9*) [s24 Legal Services Act 2000] – if the time required for the step is expected to exceed the guideline hours stated.
- Family Legal Aid Tax Invoice (*LSA Form 10*) – including a report on progress with the proceedings.

### Granting Notes

Granting Notes, which should be read in conjunction with the application of this step to a grant, are set out on pages 4-6 for:

- Additional factors
- Interpreter

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### Step 3: Hearing

Activity	Guideline Hours	Tasks normally covered by Guideline Hours
Preparation for hearing	up to <b>1.5 times</b> anticipated hearing time (hrs)	For <ul style="list-style-type: none"><li>• Reviewing file</li><li>• Preparing amendment to legal aid grant (if expecting to exceed the guideline hours for this step)</li><li>• Preparing for hearing – cross examination, briefing witnesses, submissions</li><li>• Undertaking research, if necessary</li><li>• Reporting to client</li><li>• Reporting to and invoicing LSA</li></ul> (If the anticipated hearing time exceeds 2 days, attach a copy of the court fixture notice to the tax invoice)
Hearing	<b>Actual</b> hours	For attending hearing
Review of judgement	up to <b>2</b> hour	For <ul style="list-style-type: none"><li>• Receiving and considering judgement</li><li>• Discussing with client</li></ul>

#### Documentation Requirements

- Family Legal Aid Amendment to Grant (*LSA Form 9*) [s24 Legal Services Act 2000] – if the time required for the step is expected to exceed the guideline hours stated.
- Family Legal Aid Tax Invoice (*LSA Form 10*) – including a report on progress with the proceedings.

#### Granting Notes

Granting Notes, which should be read in conjunction with the application of this step to a grant, are set out on pages 4-6 for:

- Interpreter

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### Granting Notes

#### Types of Proceedings – Proceedings Step 1 (list not exhaustive)

Application by husband or wife for maintenance during marriage	Family Proceedings Act s67
Application for maintenance of party after dissolution of marriage	Family Proceedings Act s70
Application for maintenance order in respect of child	Family Proceedings Act s74
Application for maintenance order under section 78	Family Proceedings Act s78
Application for maintenance order in favour of unmarried parent	Family Proceedings Act s79
Application for declaration as to guardianship of father	Care of Children Act s20
Application where dispute between guardians	Care of Children Act section 44
Application for appointment of additional guardian	Care of Children Act ss19, 23
Application for order to prevent removal from New Zealand	Care of Children Act s77
Application for removal of guardian	Care of Children Act s29

#### Consideration of Additional Factors - Proceedings Step 1

Guideline hours have been allocated to each activity within the steps for a proceedings on the basis that they are a reasonable estimate of the time required to perform that activity, in at least 80% of matters.

However, the circumstances surrounding a matter may make it necessary to consider guideline hours for 'additional factors'. The 'additional factors' may arise from a variety of circumstances, for example:

- Some of the parties might not be represented, resulting in the lawyer having to explain the proceedings to, and prepare documentation for, person(s) other than the legally aided person, or perhaps having to deal with a difficult litigant in person.
- The proceedings may involve a large number of parties applying for parenting orders including extended family members - any other person who is a member of the child's family, whanau, or other culturally recognised family group or any other person granted leave to apply by the Court.
- The proceeding may involve several children, perhaps with different parents. This may require different applications and reports reflecting the different circumstances.
- A party who suffers from an intellectual disability or mental illness, language or reading difficulties – but not necessitating a separate interpreter - requiring more time in taking instructions or prolonging proceedings. An additional allowance for the use of interpreters is available if required.
- There are contested allegations of sexual abuse or violence.
- A relocation application may involve an unexpected and unusual level of urgency.

## Granting Notes

### Consideration of Additional Factors - Proceedings Step 1 continued

There is no complete 'checklist' of circumstances - each matter should be considered on a case by case basis.

The guideline hours for 'additional factors' in the proceedings step(s) are:

Activity	Guideline Hours	Tasks normally covered by Guideline Hours
<b>Additional factors</b>	up to <b>3</b> hours	For additional factors which are likely to impact the preparation and filing of the orders.

The guideline hours for 'additional factors' may be applied to the grant, providing:

- the guideline hours for the activity(s) forming part of the maximum grant in this step have been exceeded; and
- the 'additional factors' can be clearly identified and justified.

### Consideration of Additional Factors - Proceedings Step 2: Pre-hearing matters and Mediation

The guideline hours for Step 2 are designed to cover all attendances for pre-hearing matters including a mediation conference. This is likely to include taking further instructions, negotiations, and attendances (by correspondence where possible, in person or by an agent otherwise) at all registrars lists and judges list while awaiting a mediation conference. However, a date for the mediation conference may be unavailable for several months. As a result, it may be necessary to resolve certain matters before the conference, for example:

- Interim negotiation of guardianship arrangements
- A short causes hearing is required where agreement cannot be reached over guardianship arrangements
- Additional time may be needed to negotiate arrangements both before and after the mediation conference and on attending Registrars' Lists and Chambers hearings.

The guideline hours for 'additional factors' in the proceedings step(s) are:

Activity	Guideline Hours	Tasks normally covered by Guideline Hours
<b>Additional factors</b>	up to <b>2</b> hours	For additional factors which are likely to impact the pre-hearing matters and mediation.

The guideline hours for 'additional factors' may be applied to the grant, providing:

- the guideline hours for the activity(s) forming part of the maximum grant in this step have been exceeded; and
- the 'additional factors' can be clearly identified and justified.

## Granting Notes

### Use of Interpreters - Proceedings Steps 1, 2, 3

It may be necessary for a provider to engage an interpreter to assist in communicating with the legally aided person.

Guideline hours are available, through a 'loading on hours granted', to recognise the time incurred in informing, briefing and seeking instructions from the legally aided person through an interpreter.

The guideline hours for the 'use of interpreters' in the proceedings step(s) are:

<b>Activity</b>	<b>Guideline Hours</b>	<b>Tasks normally covered by Guideline Hours</b>
<b>Interpreter</b>	<b>30% loading on hours granted</b>	For the additional time necessary to inform, brief and seek instructions from the client when an interpreter is engaged.

The 'loading on hours granted' may be applied to the grant at the proceedings step(s), providing:

- the 'loading on hours granted' has been applied to the activity(s) relating to the 'preparation' of a matter – as opposed to hearings;
- the guideline hours for the activity(s) relating to the 'preparation' of a matter, have been exceeded; and
- the fees for the interpreter will be claimed as a special disbursement.

